

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Request for Review of the Decision of the	)	
Universal Service Administrative	)	
Company by	)	
	)	
Nicholas County School District	)	File No. SLD-220670
Summersville, West Virginia	)	(FRNs 592051 and 562918)
	)	
Federal-State Joint Board on Universal	)	CC Docket No. 96-45✓
Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

**ORDER**

**Adopted: November 7, 2002**

**Released: November 8, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division is a Request for Review filed by the Nicholas County School District (Nicholas County), Summersville, West Virginia.<sup>1</sup> Nicholas County seeks review of funding commitment decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) in regards to the above-captioned requests for support in Funding Year 2001 of the schools and libraries universal service program.<sup>2</sup> For the reasons set forth below, we deny Nicholas County's Request for Review in part and remand the remainder for SLD to decide in the first instance.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for

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<sup>1</sup> Letter from Nathaniel Hawthorne on behalf of the Nicholas County School District to the Federal Communications Commission, filed September 26, 2001 (Request for Review).

<sup>2</sup> See Request for Review. Section 54.719(c) of the Commission's rules provides that **any** person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c). Previously, this funding period was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus, the funding period which began on **July** 1, 2001 and ended on June 30, 2002, previously referred to as Funding Year 4, is now called Funding Year 2001. The funding period which began on **July** 1, 2002 and ends on June 30, 2003, is now known as Funding Year 2002, and so on.

discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> In order to receive discounts on eligible services, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth the school's technological needs and the services for which it seeks discounts.<sup>4</sup> Once the school has complied with the Commission's competitive bidding requirements and signed a contract for the eligible services, it must file an FCC Form 471 application to notify the Administrator, among other things, of the services that have been ordered, the carrier with whom the school has signed the contract, and an estimate of funds needed to cover the discounts to be given for eligible services."

3. Nicholas County appeals two funding decisions to the Commission.<sup>6</sup> In its FCC Form 471, Nicholas County requested, among other things not relevant here, funding for internal connections, specifically the cost for installation and maintenance of Internet access for the pre-discount amount of \$24,000 (FRN 592051), and funding for cellular telephone service from Hardy Cellular for the pre-discount amount of \$3,720 (FRN 562918).<sup>7</sup> SLD issued a Funding Commitment Decision Letter to Nicholas County on September 4, 2001, which denied both of these funding requests in full.<sup>8</sup> SLD stated that the funding requests were denied because the "applicant has not provided sufficient documentation to determine the eligibility of this item."<sup>9</sup>

4. In its Request for Review, Nicholas County asks the Commission to overturn SLD's determination, arguing that SLD had indicated that documentation for FRNs 592051 and 562918 was completed and did not request further information." In support of this assertion with respect to FRN 592051, Nicholas County points to its facsimile dated July 18, 2001, by which it provided SLD with a copy of its month-to-month proposal from RESA." Nicholas County alleges that, because SLD did not specifically ask further questions or request additional

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47 C.F.R. §§ 54.402, 54.503.

<sup>3</sup> 47 C.F.R. § 54.504(b)(1), (b)(3).

<sup>5</sup> 47 C.F.R. § 54.504(c)

<sup>6</sup> In its Request for Review, Nicholas County also appealed SLD's denial of its funding request for Internet access services and internal connections services to be provided by the Regional Education Service Agency of West Virginia (RESA). See Request for Review. On January 11, 2002, however, Nicholas County filed a request to withdraw its appeal concerning the RESA Internet access services. See Letter from Nathaniel Hawthorne, on behalf of Nicholas County School District, to the Federal Communications Commission, filed January 11, 2002. This Order only addresses those funding requests that were not specifically withdrawn by Nicholas County.

<sup>7</sup> FCC Form 471, Nicholas County School District, filed January 16, 2001 (Block 5, FRN 562918)

<sup>8</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Paul Karas, Nicholas County School District, dated September 4, 2001 (Funding Commitment Decision Letter).

<sup>9</sup> *Id.*

<sup>10</sup> Request for Review at 2

<sup>11</sup> *Id.*

documentation or data. its funding request should have been approved.”

5. In support of this assertion with respect to FRN 562918, Nicholas County has provided a copy of an electronic mail from the West Virginia Department of Education to SLD.<sup>13</sup> In this correspondence, SLD had provided a list of applications that required additional documentation, and had checked off FRN 562918 as “completed” for Nicholas County.<sup>14</sup> Nicholas County understood from SLD’s check-off that no further information was needed from Nicholas.”

6. We have reviewed Nicholas County’s appeal and conclude that Nicholas County has not shown that FRN 592051 was improperly denied. Given the enormous volume of applications and other submissions that SLD processes and reviews each year, it is necessary for SLD to put in place measures to ensure prompt resolution of applications. One such measure in place is an administrative policy that applicants from whom SLD solicits additional information necessary to complete their application respond with that information within seven days of being contacted.” The policy has been necessary in order to prevent applicants from unduly delaying the application process. Here, SLD requested a quote for one-time and monthly charges and a breakdown of services on June 25, 2001.<sup>17</sup> Nicholas County concededly did not respond until July 18, 2001. Under SLD’s seven-day policy, it properly did not consider the late information: and therefore correctly denied FRN 592051.

7. With respect to FRN 562918, Nicholas County’s appeal of this FRN should be addressed by SLD in the first instance. While Commission rules provide that applicants may appeal a decision of SLD directly to the Commission without first appealing to the Administrator, the rules do not preclude the possibility that the appropriate action on a direct appeal to the Commission is to remand the appeal to SLD.<sup>18</sup> We find that such a remand is appropriate in this case. The record before us does not reveal the facts and reasoning on which SLD’s determination is based with clarity. *e.g.*, whether it misinformed Nicholas County of the

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<sup>13</sup> *Id.*

<sup>13</sup> See Request for Review, Attachment C (copy of electronic mail transmission from Phyllis Justice, West Virginia Department of Education, to Alice Carmody, Schools and Libraries Division, Universal Service Administrative Company, dated May 15, 2001 (May 15 electronic mail)).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See Request for Review by Nefesh Academy, *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-27881, CC Dockets No. 96-45 and 97-21, Order, DA 99-2284 (Coin. Car. Bur. rel. October 22, 1999) (citing seven-day rule). See also SLD Website, Reference Area, “Program Integrity Assurance (PIA),” <http://www.universalservice.org/reference/6pia.asp>.

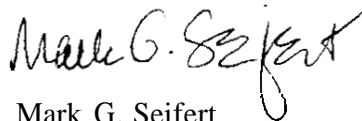
<sup>17</sup> See Universal Service Administrative Company, Schools and Libraries Division, Review Activity Log, June 25, 2001 (Review Activity Log).

<sup>18</sup> 47 C.F.R. § 54.719.

"completed" status of FRN 562918, or found that the documentation supported by Nicholas County did not support the request. A remand of the appeal will provide SLD a chance to elaborate on its reasoning and to review and address the argument made by applicant. This in turn will aid both the applicant and the Commission should Boone County find it necessary, following SLD's decision on its appeal, to seek further review from the Commission. We emphasize that, in remanding the appeal of FRN 562918 for SLD's review and adjudication, we make no conclusions as to its merits.

8. Accordingly, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed on September 5, 2001 by the Nicholas County School District, Summersville, West Virginia, IS DENIED as to FRN 592051 and REMANDED as to FRN 543275 for SLD to resolve in the first instance.

## FEDERAL COMMUNICATIONS COMMISSION



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